



STATE OF NEW YORK

UNEMPLOYMENT INSURANCE APPEAL BOARD

PO Box 15126

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DECISION OF THE BOARD

Mailed and Filed: JUNE 30, 2022

IN THE MATTER OF:

Appeal Board No. 621051

PRESENT: GERALDINE A. REILLY, MEMBER

In Appeal Board Nos. 621050 and 621051, the claimant appeals from the decisions of the Administrative Law Judge filed January 28, 2022, which sustained the initial determinations holding the claimant ineligible to receive benefits, effective September 21, 2020 through March 3, 2021, on the basis that the claimant did not comply with reporting requirements; and holding the claimant ineligible to receive benefits, effective September 20, 2020 through February 28, 2021, on the basis that the claimant failed to comply with certification requirements.

At the combined telephone conference hearing before the Administrative Law Judge, all parties were accorded a full opportunity to be heard and testimony was taken. There was an appearance on behalf of the claimant.

In Appeal Board No. 621050, we have reviewed the entire record and have considered the testimony and other evidence. It appears that no errors of fact or law have been made as to the issue of failure to comply with reporting requirements. The findings of fact and the opinion of the Administrative Law Judge regarding the issue of failure to comply with reporting requirements are fully supported by the record and, therefore, are adopted as the findings of fact and the opinion of the Board.

In addition, we find and conclude that the claimant has not demonstrated good cause for her failure to comply with reporting requirements for the period she was in New Zealand, from September 20, 2020 through February 28, 2021. Therefore, we conclude that the claimant was ineligible for unemployment insurance benefits during that time (Matter of Inatomi, 116 AD3d 1332 [3d Dept

2014)).

In Appeal Board No. 621051, as to the issue of failure to comply with certification requirements, only, based on the record and testimony in this case, the Board makes the following

FINDINGS OF FACT: The claimant was working as a customer service experience manager for an online wine company in New York. Her fiancé was assigned to

work in New Zealand. The claimant obtained a work visa allowing her to work in New Zealand, effective July 2, 2020 through April 29, 2021. The claimant and her fiancé traveled to New Zealand on July 22, 2020.

While in New Zealand, the claimant worked remotely for her employer until September 25, 2020, when she was laid off. She searched for a new job via websites and word of mouth.

In October 2020, from New Zealand, the claimant contacted the Department of Labor's telephone claims center with questions regarding unemployment benefits. The claimant was unable to access the Department of Labor's online portal. She explained to the Department of Labor representative that she had read the Department of Labor's materials and, although she was outside of the United States, she should be able to claim unemployment insurance benefits because she was authorized to work in New Zealand. The representative advised her to complete the application for unemployment insurance benefits and an out-of-country questionnaire. Consequently, the claimant filed a claim for unemployment insurance benefits on October 6, 2020, and her claim was made effective as of September 21, 2020. The claimant read the claimant handbook online including the information which stated that she would be blocked if she attempted to certify from out of the country and that she was not considered ready, willing, and able to work while out of the country. The claimant completed the out-of-country questionnaire on October 11, 2020 and indicated that she would be remaining in New Zealand through April 2021. She provided the Department of Labor with her itinerary, her lease agreement, her work visa, and her driver's license.

When the claimant attempted to certify for unemployment insurance benefits online she was blocked from doing so. The claimant received a message online that she could not certify while outside of the United States, a United States territory or Canada. After she received the message online, the claimant

instead certified for benefits via the telephone for the period in question. She indicated that she was ready, willing, and able to work because she was authorized and available for work in New Zealand. The claimant and her fiancé

returned to the United States on February 28, 2021.

OPINION: The credible evidence fails to establish that the claimant did not comply with certification requirements. We note that the claimant had notified the Department of Labor, in October 2020, that she was in New Zealand and seeking unemployment insurance benefits. It is significant that the claimant also completed an out-of-country questionnaire at the request of the Department of Labor, contemporaneous with her application for unemployment insurance benefits, and indicated in her questionnaire that she was abroad and would not be returning to New York until April 2021. The claimant, however, was instructed to apply for unemployment insurance benefits and she successfully certified via the telephone during the period in question. Accordingly, we conclude that her certifications, by telephone, do not constitute a failure to certify for the period in question.

DECISION: In Appeal Board No. 621050, the decision of the Administrative Law Judge is modified as follows and, as so modified, is affirmed.

In Appeal Board No. 621051, the decision of the Administrative Law Judge is reversed.

In Appeal Board No. 621050, the initial determination, holding the claimant ineligible to receive benefits,

effective September 21, 2020 through March 3, 2021, on the basis that the claimant did not comply with reporting requirements, is modified to be effective September 21, 2020, through February 28, 2021, and, as so modified, is sustained.

In Appeal Board No. 621051, the initial determination, holding the claimant ineligible to receive benefits, effective September 20, 2020 through February 28, 2021, on the basis that the claimant failed to comply with certification requirements, is overruled

GERALDINE A. REILLY, MEMBER